ALAN NOOR KAMAT

v.

INSPECTOR-GENERAL OF POLICE & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
AJAIB SINGH J
[CIVIL SUIT NO. P 767 OF 1981]
12 JUNE 1986

PUBLIC AUTHORITIES: *Action against public authority - General orders - Reduction of plaintiff's rank from inspector of police to constable - Imposition of fines - Declaration that the purported reduction was ultra vires and in breach of natural justice - Delegatus non potest delegare - Quasi-judicial function - General Order 30 Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations 1969 - Regulations 27, 30(1), (2), (3), (4) - Federal Constitution - Article 135(2) - Instrument of Delegation (PU (B) 548).*

On 14 May 1980 the plaintiff received a letter asking him to show cause within 15 days why disciplinary action should not be taken against him. The letter purported to be on the instructions of Deputy Inspector-General of Police in exercise of disciplinary powers delegated to him by the Police Force Commission.

The plaintiff's reply was ten days out of time. On 21 August 1981 the Inspector-General of Police ("the IGP") imposed on the plaintiff the punishment of demotion to original rank on the 1st charge and fines for the 2nd and 3rd charges.

Held:

[1] By virtue of the Instrument of Delegation the IGP is the disciplinary authority over all senior police officers for the exercise of all disciplinary matters. This delegated power is personal to the IGP and he cannot in turn delegate it further to anyone else - *delegatus non potest delegare*. As the Deputy IGP had initiated the disciplinary proceedings, the only way the position could be rectified was by the institution of fresh disciplinary proceedings in the proper manner.

[2] After having considered all available information in his possession that there was a *prima facie* case against the plaintiff for dismissal or reduction in rank it behoved the IGP as the disciplinary authority to send to the plaintiff a statement in writing containing the grounds on which it was proposed to dismiss or reduce him in rank and giving him not less than 14 days to submit in writing grounds upon which he relied to exculpate himself. Under reg. 30(2) mention of the proposed punishment is incumbent upon the authority. This omission rendered the letter of 14 May 1980 nugatory.

[3] The plaintiff should have been given an opportunity to make a plea in mitigation on punishment. This right is implied in reg. 27 of the General Orders and in the Art. 135(2) of the Federal Constitution for otherwise it cannot be said that the plaintiff had been given a reasonable opportunity of being heard.

[4] The punishments imposed on the plaintiff are null and void; the plaintiff is still an Inspector of Police and entitled to all his salaries and benefits.

Semble: The IGP was exercising a quasi-judicial function. It was very important therefore to adhere strictly to the relevant regulations.

Legislation referred to:
Federal Constitution art. 135(2)
Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations 1969, reg. 27, 30, 30(1), (2), (3), (4)

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.
For the defendants - P.M. Mahalingam

JUDGMENT

Ajaib Singh J:

The plaintiff in this case sued the defendants for the following reliefs:

> A declaration that the reduction of the plaintiff's rank from Inspector of Police to constable and fines of 2 days' and 1 day's pay respectively pursuant to the letter dated 21 August 1981 from the first defendant are unlawful and of no effect and that the plaintiff is still an Inspector of Police entitled to all the salaries and benefits due as Inspector of Police.
>
> An inquiry to determine the salaries, emoluments and other benefits due to the plaintiff.
>
> Damages and costs.

By letter dated 14 May 1980 the plaintiff was asked to show cause why disciplinary action should not be taken against him on three charges. He was given 15 days to reply. In view of some pertinent comments which I shall be making on this letter it will help if it is set out in full-

> I have been instructed to inform you that the Deputy Inspector-General of Police in exercise of the disciplinary powers which have been delegated to him by the Police Force Commission has decided to take disciplinary proceedings against you under General Order 30 Public Officers (Conduct and Discipline) (General Orders Chapter D) 1969 for the following disciplinary charges-
>
> *First Charge*
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> That you as a Public Officer, to wit Inspector in the Royal Malaysian Police Force, then servicing at the Seremban District Police Headquarters in the State of Negeri Sembilan have been found to be irresponsible in your conduct that is on 13 October 1977 you took over from Inspector Ganeswaran the investigation relating to Seremban PEP 9/77 received two sheets of paper with the number relating to illegal gambling 'Master Schedule' written thereon which was connected with the abovesaid case and on 2 July 1979 when the abovesaid case was heard in Seremban Subordinate Court it was discovered that the said exhibit 'Master Schedule' was lost and the case had to be postponed to 22 February 1980 and until now the case has not been completed and you have thereby committed a disciplinary offence under reg. 3(h) of the Regulations of Public Officers (General Orders Chapter D) 1969 appropriate for disciplinary proceedings to be taken against you pursuant to General Order 30 of the said Regulations.
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> *Second Charge*
>
> That you as a Public Officer to wit Inspector in the Royal Malaysian Force then serving at Seremban District Police Headquarters in the State of Negeri Sembilan, have been found to be irresponsible in your conduct, that is, as an Investigating Offficer in Seremban Police District on 30 October 1978, you did not open an Investigation Paper relating to Rahang Report No. 2283-4/78 which was reported to you notwithstanding that you knew an Investigation Paper ought to be opened and investigation to be carried out and you have therefore committed a disciplinary offence under reg. 3(h) of Regulations of Public Officers

(General Orders Cap. 'D') 1969 appropriate for disciplinary proceedings to be taken against you pursuant to General Order 30 of the said Regulations.

Third Charge

That you as a Public Officer to wit Inspector in the Royal Malaysian Police Force then serving at Seremban District Police Headquarters in the State of Negeri Sembilan have been found to have conducted yourself in a manner which can be construed as having committed an offence of insubordination that is, on 25 October 1979 you bought a motor car No. NJ 5077 Toyota Corolla without any permission from the appropriate authority, your act thereof contravenes a directive issued by this Headquarters *vide* letter KPN 5/4 dated 20 October 1978, and you have therefore committed a disciplinary offence under reg. 3(j) of Regulations of Public Officers (General Orders Cap. D) 1969 appropriate for disciplinary proceedings to be taken against you pursuant to General Order 30 of the said Regulations.

Pursuant to the requirement of General Order 30(2) of the said Regulations, you are hereby requested to show cause why disciplinary proceedings should be taken against you. Your explanations in written form and addressed to the Deputy Inspector-General of Police are to be sent through Deputy Director of Operations (Training) Bukit Aman, within 15 days after receipt of this letter.

If your letter of explanation is not received within the stipulated time, the Deputy Inspector-General of Police will take further action to consider and to decide on this matter based on the evidence now available to him.

The plaintiff replied by letter dated 7 June 1980 - 10 days late - giving his explanations on the three charges. The Inspector-General of Police was indulgent. He did not proceed against the plaintiff by default. But he kept the plaintiff waiting under suspense, anxiety and worry for no less than 14½ months. By letter dated 21 August 1981 he imposed the following punishments on the plaintiff-

1st charge - Demotion to original rank i.e.constable.

2nd charge - Fine 2 day's salary.

3rd charge - Fine 1 day's salary.

The General Orders which were in force at the material time in this case were enacted as the Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations 1969. It may be convenient here to set out reg. 27 and 30(1), (2), (3) and (4) which are relevant to the present proceedings-

27 In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard.

30(1) Where it is represented to, or is found by, the appropriate Disciplinary Authority or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the following provisions shall apply.

(2) The Disciplinary Authority shall after considering all the available information in its possession that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing a period of not

less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

(3) If after consideration of the said representation furnished by the officer that Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such punishment as it may deem fit.

(4) If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

By virtue of the Instrument of Delegation (PU (B) 548) which came into force on 1 January 1976 the Inspector-General of Police is, under item 15 thereof, the disciplinary authority over all senior police officers of the rank of probationary inspector up to and including chief inspector for the exercise of all disciplinary matters including the power to impose the punishment of dismissal or reduction in rank.

After going through all the evidence adduced in this case I find that there are grave irregularities and non-compliance with the provisions of the General Orders relating to the conduct and discipline of public officers and non-compliance also of Article 135(2) of the Federal Constitution which together must render the disciplinary proceedings against the plaintiff and the punishments imposed upon him null and void and of no effect.

After having considered all available information in his possession that there was a *prima facie* case against the plaintiff for dismissal or reduction in rank it behoved the Inspector-General of Police as the disciplinary authority to take disciplinary action strictly in accordance with the provisions of reg. 30 of the General Orders. Under reg. 30(2) the Inspector-General of Police was obliged to send to the plaintiff a statement in writing containing the ground or grounds on which it was proposed to dismiss or reduce him in rank and giving him not less than 14 days to submit in writing grounds upon which he relied to exculpate himself. But in the show cause letter of 14 May 1980 it is not the Inspector-General of Police but "the Deputy Inspector-General of Police in exercise of the disciplinary powers which have been delegated to him by the Police Force Commission has decided to take disciplinary proceedings against you under General Order 30 Public Officers (Conduct and Discipline) (General Orders Chapter D) 1969".

Now surely the Deputy Inspector-General of Police was in no position to say that he was exercising "the disciplinary powers which have been delegated to him by the Police Force Commission". By the Instrument of Delegation (PU (B) 548) the Police Force Commission delegated its disciplinary powers to the Inspector-General of Police to initiate disciplinary action with a view to imposing the punishment of dismissal or reduction in rank of certain senior police officers. This delegated power is personal to the Inspector-General of Police and he cannot in turn delegate it further to anyone else - *delegatus non potest delegare.*

In their evidence in Court both the Inspector-General of Police and his Deputy tried to explain this away by saying that the letter of 14 May 1980 had erroneously stated that the Deputy Inspector-General of Police was exercising disciplinary powers against the plaintiff under General Order 30 and that the words Deputy Inspector-General of Police should read as Inspector-General of Police. I am afraid I cannot accept this explanation so as to validate something which was invalid *ab initio.* The letter is quite clear and status in no uncertain terms for everyone to see that it was the Deputy Inspector-General of Police and not the

Inspector-General of Police who had initiated the disciplinary proceedings under General Order 30. The only way the position could be rectified was by the institution of fresh disciplinary proceedings in the proper manner.

The letter of 14 May 1980 set out three charges of indiscipline against the plaintiff. But there is no provision in reg. 30 for any charges to be preferred. Under reg. 30(2) the Inspector-General of Police had to give grounds on which it was proposed to dismiss or reduce the plaintiff in rank and call upon him to state in writing within a period of not less than 14 days a representation containing grounds upon which he relied to exculpate himself. The letter of 14 May 1980 set out no grounds on which it was proposed to dismiss or reduce the plaintiff in rank as required but set out three charges which were not required.

Another flaw in the letter of 14 May 1980 is that there is no mention of the proposed punishment. Under reg. 30(2) it is incumbent upon the disciplinary authority to state that it is proposed to either dismiss the officer or reduce him in rank. This omission was clearly in breach of reg 30(2) which rendered the letter of 14 May 1980 nugatory.

The provisions of reg. 27 of the General Orders and those of Article 135(2) of the Federal Constitution were also not fully complied with. Article 135(2) reads as follows-

> No member of such a service as aforesaid (which includes the police service) shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

The plaintiff sent a reply to the Deputy Inspector-General of Police on 7 June 1980 giving his explanations on the 3 charges. After considering these explanations and having found that the plaintiff had failed to exculpate himself it was incumbent upon the Inspector-General of Police thereafter to give the plaintiff an opportunity to make a plea in mitigation on punishment. This right of the plaintiff to be heard in mitigation is implied in reg. 27 of the General Orders and in Article 135(2) of the Federal Constitution for otherwise it cannot be said that the plaintiff had been given a reasonable opportunity of being heard. He had to be heard throughout the proceedings from the beginning to the end. Isn't it a fair and reasonable expectation of any person condemned for a wrong that he would be heard in mitigation before any punishment is imposed on him?

Another point albeit a small one but just to show how casual the police authorities were going about in these proceedings while a police officer's future was at stake. I am now referring to para. 2 of the so-called show cause letter of 14 May 1980. In the first place there is no such thing as requesting a public officer "to show cause why disciplinary proceedings should not be taken against you pursuant to reg. 30(2) of the General Orders." Disciplinary proceedings had in fact already commenced when it was decided to proceed against the plaintiff under regulation 30(1) of the General Orders. The procedure thereafter is set out in reg. 30(2), (3) and (4) but there is no requirement here for any show cause letter to be sent. Under reg. 30(2) it is a statement in writing which the Inspector-General of Police had to send to the plaintiff stating the grounds on which it was proposed to dismiss or reduce him in rank and giving him not less than 14 days to reply. Secondly you don't ask for "your explanations in written form". In terms of reg. 30(2) you "call upon him to the state in writing within a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself."

The Inspector-General of Police was exercising a quasi-judicial function and was in the process of taking drastic action against the plaintiff. It was very important therefore to adhere strictly to the relevant regulations in the General Orders and Article 135(2) of the Federal Constitution. The Inspector-General of Police and his Deputy might well have acted with the best of intentions when they dealt with this matter but in view of the non-compliance of the relevant regulations in the General Orders and of Article 135(2) of the Federal Constitution it cannot in all sincerity be said that the plaintiff got a fair deal.

In the circumstances therefore I allow the plaintiff's claim and declare that the punishments imposed on him are null and void and of no effect. I further declare that the plaintiff is still an Inspector of Police and entitled to all his salaries and benefits due to him as such. The parties are to determine the plaintiff's salaries and other emoluments due to him failing which an inquiry will be held by the Court to determine these issues.

The plaintiff has also claimed damages. In view of the orders which I have made there will be no order for damages as the plaintiff will be fully compensated after determination of the monies due to him. Moreover the plaintiff did not seriously pursue his claim for damages and there was hardly any evidence in support. I also order the defendants to pay the costs of the proceedings to the plaintiff.

Also found at [1987] 1 CLJ 51